

Honorable Robert J. Bryan, United States District Judge

BREEAN L. BEGGS, WSBA # 20795
PAUKERT & TROPPEMANN, PLLC
522 W. Riverside Ave., Ste. 560
Spokane, WA 99201
(509) 232-7760

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

PHILLIP MOODY, a single man

Plaintiff,

vs.

THE WASHINGTON DEPARTMENT
OF CORRECTIONS, a subsidiary of
the State of Washington, and the
STATE OF WASHINGTON, and,
DEPARTMENT OF CORRECTIONS
EMPLOYEES JOHN/JANE DOES 1-5

Defendants.

NO. 3:20-cv-05201-RJB-MAT

SECOND AMENDED COMPLAINT
FOR DAMAGES

COMES NOW Plaintiff Phillip Moody, by and through his attorneys of record, and makes the following Amended Complaint pursuant to judicial order the filing of a clean copy of his proposed amended complaint and the judicial order dismissing federal claims and relief:

1. PARTIES

1.1 Plaintiff Phillip Moody is a single man who resided within Pierce County Washington at relevant times related to this matter.

1.2 The Department of Corrections (“DOC”) is a subdivision within the State of Washington and any liability of the Department is attributable to the State of Washington.

1.3 Upon belief, at all relevant times described in this complaint Defendant Does 1-5 were acting as employees and agents for the State of Washington Department of Corrections within the scope of their duties and under color of law and are named in their individual and representative capacities.

2. JURISDICTION & VENUE

2.1 All acts complained of occurred in the Western District of Washington.

2.2 Jurisdiction is proper in the United States District Court as filed pursuant to Title 42, United States Code § 1988; Title 28 USC § 1331; and 28 USC §1343(a)(3).

2.3 Venue is proper in the United States District Court for the Western District of Washington pursuant to 28 U.S.C. § 1391(b) because Plaintiff’s claims for relief arose in this District and one or more of the Defendants reside in this District.

2.4 This complaint seeks relief for state law claims against all Defendants except Judy McCullough.

1 2.5 Plaintiffs presented a non-judicial notice of claim to Defendants on January
2 9, 2020.

3 2.6 Over 60 days have passed since the presentation of the non-judicial notice
4 of claim.

5 2.7 Defendant DOC and the State of Washington have given consent to
6 resolving state law claims in this Court, and waive claims of sovereign
7 Immunity for those claims.

8 **3. PRE-DISCOVERY FACTUAL ALLEGATIONS**

9 3.1 On December 15, 2016 Plaintiff Phillip was in the custody of DOC at its Rap
10 House/Lincoln Park in Tacoma, Washington, serving a Drug Offender
11 Alternative Sentence (“DOSAS”) sentence. That evening, he suffered a
12 serious ankle injury on the way to a required community re-entry meeting
13 and as a result could not travel on the stairs to the room where the meeting
14 was held. Video cameras demonstrated that Plaintiff Phillip stayed at the
15 entrance of the building where the meeting was held for the entire two-hour
16 duration of the meeting until medical assistance arrived and transported
17 him to a medical center.

18 3.2 Subsequent to Plaintiff’s injury, CCO Judy McCullough accused Plaintiff of
19 violating DOC rules of unauthorized time in the community and failing to
20 complete or being terminated from his treatment program.

1 3.3 CCO Judy McCullough then sought to terminate Mr. Moody's DOSA
2 sentence based on failing to complete or being terminated from his treatment
3 program due to failing a drug test.

4 3.4 Mr. Moody never failed a drug test and CCO McCullough knew this fact, or
5 was deliberately indifferent to the falsity of the allegation that he failed the
6 drug test.

7 3.5 On January 18, 2018, CCO McCullough prosecuted Mr. Moody for being
8 administratively terminated from his substance abuse program for failing a
9 drug test with the intent of having his DOSA sentence terminated and serving
10 an extended prison sentence.

11 3.6 Upon belief, on January 18, 2018, a Department of Corrections hearing officer
12 relied on CCO McCullough's false assertions and maliciously motivated
13 prosecution to terminate Mr. Moody's DOSA, which resulted in his losing the
14 option of community-based substance abuse treatment and release and instead
15 remaining in prison for the balance of his sentence.

16 3.7 As a result of the illegal revocation of his DOSA sentence, and but for the
17 malicious and false prosecution, Mr. Moody served more than two additional
18 years in prison than he should have.

19 3.8 As a proximate cause of being returned to prison for two additional years, Mr.
20 Moody suffered physical assault and extended time in solitary confinement.
21
22

1 3.9 As a proximate cause of being returned to prison for two additional years, Mr.
2 Moody suffered physical and emotional distress and pain and loss of
3 enjoyment of life in an amount to be proven at trial.

4 3.10 As a proximate cause of being returned to prison for two additional years, Mr.
5 Moody suffered lost income in an amount to be proven at trial.

6 3.11 On January 23, 2019, Hearing Officer Erika Fields reversed the January 18,
7 2017 termination of Mr. Moody's DOSA because of the falsity of the
8 allegation of him failing a drug test, which resulted in his release from prison.

9 3.12 Having terminated the prosecution against him on January 23, 2019, less than
10 one year ago, Mr. Moody filed in court the following liability claims against
11 the State of Washington, its Department of Corrections and Defendant Does
12 1-5.

13 4. LIABILITY

14 STATE LAW CAUSES OF ACTION AGAINST ALL DEFENDANTS

15 EXPECT JUDY MCCULLOUGH

16 Unlawful Imprisonment

17 4.1 The conduct of Defendants DOC, State of Washington, and Does 1-5 resulted
18 in the intentional confinement of Plaintiff for an estimated additional two
19 years, which was unjustified under the circumstances and unlawful.
20
21
22

1 4.2 As a direct and proximate result of the conduct of Defendants DOC, State of
2 Washington, and Does 1-5, Plaintiff sustained injuries and damages,
3 discussed more fully herein.

4 **Malicious Prosecution**

5 4.3 Defendants DOC, State of Washington, and Does 1-5 initiated and/or
6 continued the prosecution of Plaintiff when they sought to terminate his
7 DOSA and impose additional incarceration, without probable cause and based
8 on malice.

9 4.4 Plaintiff's malicious prosecution was terminated on the merits in his favor on
10 January 23, 2019.

11 4.5 As a direct and proximate result of the conduct of Defendants DOC, State of
12 Washington, and Does 1-5, Plaintiff sustained injuries and damages,
13 discussed more fully herein.

14 4.6 The conduct of Defendants DOC, State of Washington, and Does 1-5
15 constitutes malicious prosecution under the laws of Washington State.

16 **Infliction of Emotional Distress**

17
18 4.7 Defendants DOC, State of Washington, and Does 1-5 engaged in conduct that
19 constitutes negligent infliction of emotional distress or, alternatively,
20 intentional infliction of emotional distress (outrage).

1 4.8 As a direct and proximate result of the conduct of Defendants DOC, State of
2 Washington, and Does 1-5, Plaintiff sustained injuries and damages,
3 discussed more fully hereinafter.

4 **Negligence/Tortious Conduct**

5 4.9 At all times material hereto, Plaintiff was owed several duties of care by the
6 Defendants DOC, State of Washington, and Does 1-5, including, but not by
7 way of limitation, one or more of the following:

- 8 a. The duty to be free from a negligent, unwarranted and/ or unlawful
9 violation of his right of personal liberty;
- 10 b. The duty to have legal cause to effectuate a transfer, termination of his
11 treatment program, termination of his DOSA community supervision
12 program and detention of an individual;
- 13 c. The duty to be free from restraint and detention without legal
14 authority;
- 15 d. The duty to be free from unwarranted/ unlawful imprisonment;
16 and/or,
- 17 e. The duty of State officers, agents and employees to act and
18 exercise the degree of care as others would act and exercise in the
19 same or similar circumstances.

20 4.10 The conduct of Defendants DOC, State of Washington, and Does 1-5
21 constitutes recklessness, gross negligence and/or negligence under the laws of
22 the State of Washington.

4.11 As a direct and proximate result of the tortious conduct of Defendants DOC, State of Washington, and Does 1-5 (under both state law and 42 USC Sec. 1983), Plaintiff sustained injuries and damages, discussed more fully herein.

5. DAMAGES

5.1 As a direct and proximate result of the facts as alleged herein, Plaintiff has suffered, and will in the future continue to suffer, the loss of enjoyment of life, pain, mental anguish, mental injury and suffering and other injuries.

5.2 As a further direct and proximate result of the occurrence alleged herein, Plaintiff has sustained lost income in an amount to be proven at the time of trial.

6. PRAYER FOR RELIEF

6.1 Compensatory damages in an amount to be proven at trial;

6.3 Such other and further relief as the court deems just and equitable.

DATED this 30th day of April, 2021

PAUKERT & TROPPEMANN, PLLC

By: /s/ Breean L. Beggs

BREEAN L. BEGGS, WSBA # 20795

ANDREW BIVIANO, WSBA #38086

522 W Riverside Ave., Suite 560

Spokane, WA 99201

PH: 509-232-7760

FAX: 509-232-7762

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of April, 2021, I electronically filed the foregoing with the Clerk of the Court using CM/ECF System, which will send notification of such filing to the following:

Garth A. Ahearn, WSBA 29840
William C. Schwarz, WSBA 47122

☐ Hand Delivery
☐ U.S. Mail
☐ By Legal Messenger
☐ Fax
☒ Email:
garth.ahearn@atg.wa.gov
William.Schwarz@atg.wa.gov
dann.graf@atg.wa.gov
jaymie.burton@atg.wa.gov
Katherine.Kerr@atg.wa.gov
tortaecf@atg.wa.gov

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

By /s/ Breean L. Beggs
BREEAN L. BEGGS, WSBA #20795